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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

Appellees

JURISDICTIONAL STATEMENT

Appellant, having this day filed his Petition for Appeal and Assignment of Errors in the above entitled cause for an appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Minnesota, entered herein on the 12th day of August, 1944, presents the following statement pursuant to Rule 12 of the Rules of the Supreme Court of the United States, showing that the Supreme Court of the United States has jurisdiction to review said judgment on appeal and that such jurisdiction should be exercised in this case.

I

Statutory Provisions Sustaining Jurisdiction

The jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 344(a)), and, also, in the alternative, under Section 237 (c) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 344 (c)), as a petition for certiorari if the case is not a proper subject of a petition for appeal under said Section 237 (a).

II

The Minnesota Statute the Validity of Which Is Involved

Laws of Minnesota for 1943, Chapter 500, Sections 1 to 24, inclusive, was passed and approved April 19, 1943, to "take effect and be in force from and after July 6, 1943". It is incorporated, in part, in *Minnesota Statutes* 1941 (Supplement) as Sections 360.101 to 360.123. It is also incorporated in full in *Mason's Minnesota Statutes, 1927, 1944 Supplement,* Sections 5494-101 to 5494-124.

It provides, in part, as follows:

> "Sec. 3. Subdivision 1. *Public Corporation Created.* —For the purposes herein provided there shall be created a public corporation in and for any two contiguous cities of the first class in this state, to be known as the Metropolitan Airports Commission of those cities."
>
> (Cities of the first class in Minnesota are those cities having a population of 50,000 or more.)
>
> • • • "Sec. 9. Subdivision 1. *Exercise of powers.* —Immediately after the adoption and filing of its permanent plan of operation, the corporation shall pro-

ceed to exercise the powers herein granted. These powers may be exercised at any place within 25 miles of the city hall of either city."

"Subd. 2. Immediately following the adoption and filing of its permanent plan of operation, the corporation shall and is hereby directed to take over the use, management, operation, regulation, policing and control of any or all airports owned by either city, whether said airports are then under the management and control of, or title thereto is held in the name of the city itself, the council, a board of park commissioners, or any other body; consent by each city, the council, the board of park commissioners, and any other agency, board, or department thereof, to such use, management, operation, regulation, policing, and control to be conclusively presumed to have been given by the appointment of commissioners pursuant to the provisions of this act. Authority is hereby granted to the mayor and council of each city and any board or commission having jurisdiction of airports in either city to give such consent in that manner. Immediately upon taking over the use, management, operation, regulation, policing and control of any such airport or airports the corporation may exercise all the powers herein granted to it with reference to any airport property, except the right of leasing or disposing of the fee title to the lands included therein, *without the payment of any rental therefor,* from the date of such taking over. The title to the fee of the land included in each airport shall remain in the city, or agency, board, or department of such city, then owning it. The action to be taken pursuant to the provisions of this subdivision of this section is declared to be necessary in order to provide an integrated airports system and enable the corporation to carry out the public and governmental purposes of this act. The corporation shall not close any existing airport in either city to air freight commerce consigned to or originating in such city unless and until it provides for such city, freight and airport facilities which, in the judgment of the corporation,

are as substantially equal in convenience and safety to the business and industries of that city as are the existing freight airport facilities *now available* (except as the same may be restricted by governmental use) to its business and industries. For the purpose of this subdivision only the word 'airport' shall include only the lands, buildings, and equipment acquired for use primarily for any such airport so taken over as in this subdivision provided."

"Subd. 3. The authority in Subdivision 2 of this section granted to the corporation is not conditioned upon the receipt of any appropriation in this act provided for. Each city involved or any board or commission of such city, shall pay the balance due on its bonds which have prior to the enactment of this act been issued pursuant to law or charter to secure funds for the acquisition, establishment, construction, enlargement or improvement of the airports to be taken over as provided in Subdivision 2, according to the terms of such bonds. The corporation created by this act may, however, if it shall so determine, assume the payment of part or all of the balance due on such bonds at the time of its taking over the use, management, operation, regulation, policing and control of such airports."

* * * * * * *

"Sec. 12 * * * Subd. 4 (1) There is hereby created a special fund to be known as the Minnesota Metropolitan Airports Fund, to be used for the purposes hereinafter specified. To provide moneys for the fund the state auditor is hereby authorized and directed to levy upon all taxable property in the state, in the manner in which other state taxes are levied, for the taxable years of 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952 and 1953, taxes sufficient to produce the sum of $100,000 for each of said taxable years, together with such additional sums as may be necessary to pay the interest upon the certificates of indebtedness hereinafter authorized. In case of a deficiency in the

proceeds of such tax levy for any year, the auditor shall levy sufficient additional amounts in succeeding years to compensate therefor until the full amount herein authorized has been raised. The proceeds of such taxes shall be credited to the Minnesota Metropolitan Airports Fund.

"(2) Pending the levy and collection of such taxes, upon request of the governor, the state auditor is hereby authorized and directed to issue and sell certificates of indebtedness of the state as funds are needed for the purposes of this act, not exceeding the amount required from time to time to meet the appropriations hereinafter made and not exceeding $1,000,000 in the aggregate. Such certificates shall be known as Minnesota Metropolitan Airports Certificates of Indebtedness, shall be numbered consecutively, and shall be issued and sold at not less than par upon sealed bids after two weeks,' published notice, unless sold to the State Board of Investment as hereinafter provided. Such certificates shall be in such form and of such denominations and shall mature at such times as the auditor may determine, not exceeding the time when funds shall be available for the payment thereof from the tax levies authorized by paragraph (1) of this subdivision. Such certificates shall bear such rate of interest, payable semiannually, and shall contain such other terms and provisions, not inconsistent herewith, as the auditor may determine. Such certificates shall be signed by the state treasurer and attested by the state auditor under their official seals, and the auditor and treasurer shall keep records thereof. Such certificates shall be a charge upon and a lien against the taxes authorized by paragraph (1) of this subdivision. The principal and interest of such certificates shall be payable only from the proceeds of such taxes, and so much thereof as may be necessary is hereby appropriated for such payments; provided, that such interest as may become due at any time when there is not on hand a sufficient amount from the proceeds of such taxes to pay the same shall be paid out of the general revenue fund,

and the amount necessary therefor is hereby appropriated, to be reimbursed from the proceeds of such taxes when received. All moneys received from the sale of such certificates shall be credited to the Minnesota Metropolitan Airports Fund.

"(3) The State Board of Investment is hereby authorized to invest any funds under its control or direction in any certificates of indebtedness issued hereunder and to purchase such certificates at a rate of interest not exceeding three per cent per annum, and such certificates may be issued and sold to the board without advertising for bids.

"(4) There is hereby appropriated to the governor out of the Minnesota Metropolitan Airports Fund, for the purposes hereinafter specified, the sum of $1,000,000, for the biennium period ending June 30, 1945, of which $500,000 shall be available for the fiscal year ending June 30, 1944, and $500,000 available for the fiscal year ending June 30, 1945. Any balance remaining at the end of any fiscal year shall be carried over and shall be available for the purposes of this act until July 1, 1945, and thereafter until all obligations theretofore incurred hereunder have been paid."

III

Date of Judgment Sought to Be Reviewed and Date on Which Application for Appeal Is Presented

The judgment sought to be reviewed by this appeal was a final judgment, entered by the Supreme Court of Minnesota on the 12th day of August, 1944. The Supreme Court of the State of Minnesota is the highest court of that State in which a decision in this case can be had.

IV

The Nature of the Case and Rulings of the Court on Federal Questions

1. *General Nature*

The action was brought on March 31, 1944, in the District Court, Fourth Judicial District, State of Minnesota, to restrain the individual members of the Minneapolis Park Board, temporarily and thereafter permanently, from turning over, surrendering, selling or giving to the Minneapolis-St. Paul Metropolitan Airports Commission or to its members the use, management, operation or control, the possession or right to possession, or any title or interest in or to the Minneapolis Municipal Airport, the land whereon it is located, or any of its equipment or appurtenances.

The basis of the action that the Minneapolis Park Board and its members were about to turn over the Minneapolis Airport to the Metropolitan Airports Commission without exacting, obtaining or being paid or promised an adequate or any consideration therefor and without the payment of any price, rental or consideration therefor, and, were about to do those things without authority, warrant, or justification, except as given by Laws of Minnesota, Chapter 500, which law is unconstitutional and void as repugnant to the Federal Constitution—Amendments Article XIV, Section 1, providing: "Nor shall any state deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2. *Rulings of Trial Court*

The complaint in said action set out among other things:

"VII

That said Law, Chapter 500 of the Laws is unconstitutional and void. It is in contravention of the provisions

of Article XIV, Section 1 of the Amendment to the Constitution of the United States providing: 'Nor shall any state deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws' * * *"

The Minneapolis-St. Paul Metropolitan Airports Commission intervened.

The defendants and the intervener demurred to said complaint as not stating a cause of action.

The trial court on June 8, 1944, sustained the demurrer stating in its memorandum, made a part of the order sustaining the demurrer: "Plaintiff attacks the constitutionality of Chapter 500, Laws 1943, the act creating the Minneapolis-St. Paul Airports Commission on three grounds: 1. That it is violative of the 14th Amendment to the Federal Constitution, Section 1, providing that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * *"

3. *Rulings of Minnesota Supreme Court*

In affirming the order of the trial court sustaining the demurrer to plaintiff-appellant's complaint, the Supreme Court of Minnesota says, in part:

> "We therefore hold that Chapter 500, in authorizing the transfer of the use and possession of the Municipal Airport to the commission without compensation to the city or to the park board, does not violate the Fourteenth Amendment to the Constitution of the United States."

And in denying a rehearing that court said, in part:

> "Nor do we see any violation of the Fourteenth Amendment to the federal constitution, since we see no infringement of the equal protection clause."

V

Cases Believed to Sustain Jurisdiction

The following decisions of this Court are believed to sustain the jurisdiction of the Supreme Court of the United States on an appeal to review the final judgment here in question, within the provisions of said Section 237 (a) of the Judicial Code, as amended (28 U. S. C. A. Section 344(a)):

Standard Oil Company of California v. *Johnson* (1941), 316 U. S. 481, 86 L. Ed. 1611, 62 S. Ct. 1168, wherein it was said:

> "Since the validity of the state statute as construed was drawn in question on the ground of its being repugnant to the constitution, we think the case is properly here in appeal under Sec. 237 (a) of the Judicial Code, 28 U. S. C. A. Sec. 344 (a)."

Fiske *v.* State of Kansas (1927) 274 U. S. 380, 71 L. Ed. 1108, 47 S. Ct. 655;

New York Ex Rel. Bryant *v.* Zimmerman (1928) 278 U. S. 63, 73 L. Ed. 184, 49 S. Ct. 61;

Dotz *v.* Love (1935) 295 U. S. 64, 79 L. Ed. 1303, 55 S. Ct. 558;

Dahnke-Walker Milling Co. *v.* Bondurant (1921), 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106, involving the constitutionality of a state statute, wherein it was said:

> "Our conclusion on the jurisdiction at question is that, as the state court applied and enforced to plaintiff's disadvantage a state statute which plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error."

Eureka Pipe Line Co. *v.* Hallanan (1921) 257 U. S. 265, 66 L. Ed. 227, 42 S. Ct. 101.

United Fuel Gas Co. *v.* Hallanan (1921) 257 U. S. 277, 66 L. Ed. 234, 42 S. Ct. 105.

Miedreich v. Lauenstein (Ind. 1914) 232 U. S. 236, 58 L. Ed. 584, 34 S. Ct. 309.

Where a state court holds that a federal question is made before it, according to its practice, and proceeds to determine it, the Supreme Court of the United States will regard the question as duly raised.

A proceeding for a writ of prohibition to restrain a municipality from carrying a municipal ordinance into effect, because of its repugnancy to the federal constitution is a "suit".

Weston *v.* City Council of Charleston (S. C. 1829) 27 U. S. (2 Pet.) 449, 7 L. Ed. 481.

And the same case holds that a "final judgment" is one which determines the particular cause, and, where a prohibition is applied for to restrain a party from doing an act alleged to be repugnant to the federal constitution and the court refuses to grant it on the ground that the statute which authorizes such act does not violate the constitution, a writ of error lies. Constitutional questions passed on by State Appellate Court can be considered by U. S. Supreme Court even if not properly raised in lower court.

Whitfield *v.* State of Ohio 277 U. S. 431.

A judgment of a State Supreme Court affirming the refusal of a lower court to continue a temporary restraining order, and to grant a permanent injunction on the petition and answer, and leaving nothing for the lower court to do but dismiss the petition, is a final judgment and reviewable by certiorari under Section 237 (a) of the Judicial Code, as amended (28 U. S. C. A. Section 344 (a)).

The state Supreme Court having expressly passed upon the federal question raised on petition for rehearing it is immaterial that that precise question may not have been raised in the court below.

North Carolina R. Co. *v.* Zachary (N. C. 1914) 232 U. S. 248, 58 L. Ed. 591, 34 S. Ct. 305.

Missouri Ex. Rel. Missouri Ins. Co. *v.* Gehner (1930) 281 U. S. 313, 47 L. Ed. 870, 50 S. Ct. 326.

Cumberland Coal Co. v. Board of Revision (1931) 284 U. S. 23, 76 L. Ed. 147, 52 S. Ct. 48.

Home Ins. Co. *v.* Dich (1930) 281 U. S. 397, 74 L. Ed. 926, 50 S. Ct. 338.
Concordia Fire Ins. Co. *v.* Illinois (1934) 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830.

VI

Statement of Grounds Upon Which It Is Contended That Questions Involved Are Substantial

As a matter of general public policy, the state court decided at least four broad federal questions of legislative power which are of national importance and significance under the Fourteenth Amendment to the Constitution of the United States:

(a) It decided that a state legislature has the power, within the due process clause of the Fourteenth Amendment, to take without compensation the property of a city owned in its private or proprietary character, in which it has had a vested interest of fifteen years standing, from which it derives a profit of upwards of $16800 a year.

(b) It decided that a state legislature has the power within the due process clause of the Fourteenth Amendment to the federal constitution, to take from the taxpayers without compensation their vested interest in that property and in that going and profitable business enterprise, and in addition, to impose on the taxpayer the burden of paying the principal and interest on the bonds issued to raise the capital invested in said enterprise.

(c) It decided that neither the city nor the taxpayers of the city are in a position to invoke the due process clause of the federal constitution as against the state in taking, without compensation, such privately owned property and the rentals thereof and the profit therefrom, the title to which was held in trust by the city for the benefit of its taxpayers.

(d) It decided that the taxpayers, mulcted of thousands of dollars by the seizure of the rentals and profits from that business enterprise, and by the imposition of the burden of paying the bonds which furnished the capital for the same, have no redress under the equal protective clause where a million dollar fund is provided by Chapter 500, Laws of 1943 now for expenses incurred by the present Metropolitan Airports Commission prior to 1945, and no provision is made for the Metropolitan Airports Commission of future contiguous cities of the first class.

Such decisions raise substantial federal questions which we believe have not been decided by this court.

VII

Acquisition of Property

As pointed out in appellant's Reply Brief on appeal to the Minnesota Supreme Court, the records of the Registrar of Titles of Hennepin County, Minnesota, in Volume 134, Certificate No. 42992, dated August 28, 1928, shows that there was filed on that date, document No. 79993, dated June 21, 1928, conveying from Snelling Field, Inc. to the City of Minneapolis the land now known as Wold-Chamberlain Field, or Minneapolis Municipal Airport.

Laws of Minnesota for 1927, Chapter 62, authorizes the Minneapolis Park Board to acquire by purchase, gift, condemnation or otherwise "All land necessary or convenient for the purpose of establishing and maintaining a municipal flying field." Nothing is said about it being held in a governmental capacity. On the contrary the Park Board is authorized "to lease such portions of said land so designated for a flying field to the U. S. Government for the purposes of the air mail or for other public purposes, *and to the State of Minnesota or any branch of the state government for public purposes.*

Under this act the Park Board completed the acquisition of 325 acres of land for the airport in August, 1928.

Points and Authorities

This is a suit by taxpayers against the members of the city park board, and not in any sense a suit by the city against the state.

We wish to cite in this connection *City of Hazzard* v. *Duff* (1941) 287 Ky. 427, an action by the city to enjoin an execution levied on a brick building which the court held was owned by the city in a proprietary capacity, the court says:

> "Taxpayers of the municipality became the owners of the business thus authorized to be conducted and while acting in that capacity the municipality is subject to the liabilities of any corporation or association engaged in like or similar enterprises, 19 R. C. L. Sec. 9 page 697, and its property used in its private capacity is subject to execution."

In *Hoppe* v. *City of Winona* 113 Minn. 252 (259), it is said:

> "It is clear that the bridge was the private property of the city, and held, owned and maintained in its proprietary capacity. * * * Travel thereon was limited to those who paid the prescribed toll, receipts from which went into the city treasury."

In the case of *New Orleans* v. *New Orleans Waterworks*, 142 U. S. 79 (91), this court says "a municipality being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign. * * * While with respect to its private or proprietary rights and interests it may be entitled to constitutional protection."

In *Worcester* v. *Worcester Street Ry Co.* 196 U. S. 539 (551), this court says:

> "In general it may be conceded that it can own private property, not of a public or governmental nature, and that such property may be entitled, as is said, 'to constitutional protection'. Property which is held by these corporations upon conditions or terms contained in a grant, and for a special use, may not be diverted by the legislature."

The case of *City of Trenton* v. *State of New Jersey* 262 U. S. 182, 67 Law. Ed. 937, was an attempt on the part of the city, as such, and as distinguished from its citizens and taxpayers, to invoke the 14th Amendment.

This court recognized the distinction, saying (page 185):

> "The relations existing between the state and the water company were not the same as those between the state and the city. The company was organized and carried on its business for pecuniary profit. Its rights and property were privately owned and therefore safeguarded by the constitutional provisions here sought to be invoked by the city against the legislation of the state."

Now, our property in the airport, our property in the hangars, our property in the rentals from those hangars which went into the city treasury, are privately owned properties, and our right not to be saddled with the burden of paying $327,600.00 in bonds and interest is a private right, and therefore "safeguarded by the constitutional provisions".

In the *Trenton* case, supra, the question before the court for decision was the validity of an act imposing a license fee, for taking water in excess of a certain amount from the Delaware River. The court says:

> "The court of errors and appeals held that it was valid; that the state, under its police power, might impose a

> license fee as specified in the act * * * The state undoubtedly has power, and it is its duty, to control and conserve the use of its water resources for the benefit of all its inhabitants and the Act of 1907 was passed pursuant to the policy of the state to prevent waste and to economize *its* water resources."

That was the end of the case, so far as the validity of the act was concerned. If the state properly acted under its *police powers,* there was not and could not be any question of violating the constitution. Any statement as to the rights of a city in connection with is private or proprietary holdings to raise constitutional questions under the Fourteenth Amendment was, we respectfully suggest, obiter dictum.

The opinion and decision of the Supreme Court of Minnesota and the opinion denying the rehearing are not yet published in the official Minnesota Reports, but, are published in Volume 15, page 241, of the Northwestern Reporter, (advance sheets.) 2nd Series.

Wherefore, Appellant respectfully submits statement and prays the order of this court allowing this appeal for review of the judgment of the Supreme Court of the State of Minnesota, entered in the above entitled cause on August 12, 1944,

Respectfully submitted,

MART M. MONAGHAN,
Appellant Pro Se,
815 Palace Building,
Minneapolis, Minnesota.

APPENDIX A

No. 154 Hennepin County Loring, C. J.

33884

MART M. MONAGHAN, *Appellant,*

v.

MRS. MAUDE D. ARMATAGE, et al., *Respondents,*

THE MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Interveners*

Endorsed: Filed July 7, 1944. Grace Kaercher Davis, Clerk Minnesota Supreme Court.

Syllabus

1. L. 1943, c. 500, is not special as distinguished from general legislation merely because at the time it was passed there was but one group of two contiguous cities of the first class to which it could be applied, if the classification was not arbitrary or special, but applicable generally and uniformly throughout the state.

2. The classification of airports for contiguous cities of the first class, as distinguished from single cities or non-contiguous ones, was justified as based on a substantial distinction germane to the subject matter of L. 1943, c. 500.

3. Certain provisions of c. 500 considered and *held* to be procedural and directory rather than substantive, and not intended by the legislature to modify the substantive provisions of the chapter, following Bielke *v.* American Crystal Sugar Co. 206 Minn. 308, 312, 288 N. W. 584, 586.

4. The provisions of c. 500 authorizing the transfer without compensation of the use and possession of the municipal airport from the park board of Minneapolis to the commission authorized by the chapter is not a violation of Minn. Const. art. 1, § 13.

5. Regardless of whether the city of Minneapolis holds its municipal airport for a proprietary or a governmental

purpose, neither it nor its park board is in a position to invoke the due process clause of U. S. Const. Amendment XIV, as against the state itself, or its agency duly created and empowered by the legislature to take over without compensation the possession and use of the municipal airport.

Affirmed.

Opinion

LORING, *Chief Justice:*

The plaintiff-appellant brought this suit to restrain the Minneapolis park board from transferring the possession and use of the municipal airport in that city to the Minneapolis-St. Paul Metropolitan Airports Commission created under authority of L. 1943, c. 500. That act is discussed in case number 33874, Erickson v. King, — Minn. —, 15 N. W. (2d) 201, filed herewith. The commission intervened in support of the defendants' demurrer to the complaint on the ground that it did not state a cause of action.

In this case the contentions of the appellant are that L. 1943, c. 500, is special legislation in violation of Minn. Const. art. 4, §§ 33, 34, and that it attempts to take from the city of Minneapolis its property in the municipal airport without compensation, in violation of the due process clause of U. S. Const. Amendment XIV, as well as Minn. Const. art. 1 § 13, which forbids the taking of private property for public use without just compensation.

1. Chapter 500, § 3, subd. 2, specifically provides:

> "This act is expressly declared to be applicable to all such cities whether or not they are now or hereafter existing under a charter framed and adopted under Section 36 of Article IV of the state constitution."

Obviously, it was intended by the legislature that the act should be general and not special legislation, and that it should operate generally and uniformly throughout the state. The fact that at present there is but one group of two contiguous cities of the first class to which it can be applied does not compel the conclusion that it is special legislation if the classification is not arbitrary or special,

but applicable generally and uniformly throughout the state. Board of Education v. Borgen, 192 Minn. 367, 256 N. W. 894.

2. That a classification of airports for contiguous cities of the first class, as distinguished from single cities or non-contiguous ones, is justified as based on a substantial distinction is obvious from the necessity for unified control of the equipment of modern airport facilities such as radio beams and the like in such contiguous cities. Erickson v. King, — Minn. —, 15 N. W. (2d) 201, *supra*. We think the classification is germane to the purpose of the law.

3. Appellant relies largely upon certain provisions of the act which he contends make the act impossible of application to any cities which in the future may become contiguous cities of the first class. For instance, § 4, subd. 1, providing for the membership of the commission thereby created, requires that one of such members shall be—

> "• • • a member of the board of commissioners having jurisdiction *at the time of the passage of this act* of airports of each of the respective cities, • • •." (Italics supplied.)

Section 4, subd. 3, provides:

> *"Within 30 days after the effective date of this act, the commissioners shall be selected as provided in Subdivision 1 of this section."* (Italics supplied.)

Section 24 provides:

> "This act shall take effect and be in force from and after July 6, 1943."

We seek the legislative intent in the light of other provisions in the act, and especially in the light of the avowed purpose to enact a general law which shall apply to municipalities which in the future shall become contiguous cities of the first class. If a construction of the act or an application of it is tenable which achieves that purpose, it is our duty so to construe and apply the act.

The provisions cited by appellant are procedural and directory rather than substantive, and are intended to

implement, not to modify, the substantive provisions setting up the governmental instrumentality. The distinction between substantive provisions and those which are merely procedural and directory is clearly expounded in the opinion of the late Mr. Justice Stone, who spoke for this court in Bielke v. American Crystal Sugar Co. 206 Minn. 308, 312, *et seq.*, 288 N. W. 584, 586, *et seq.* We need not repeat what is there said. These procedural provisions are not of the essence of the act, and we hold that they do not rob it of its character as general as distinguished from special legislation. We see no violation of Minn. Const. art. 4, §§ 33, 34.

4. We come now to the contention that the transfer of the use and possession of the municipal airport from the city park board to the commission is a taking without compensation. For the reasons stated under paragraph 5 of this opinion, the taking is not the taking of private property in violation of Minn. Const. art. 1, § 13.

5. The remaining question is whether Minneapolis has such a proprietary interest in the airport that its use and possession cannot be taken without compensation by the state acting through the commission authorized by c. 500. Is the city, as a state agency for the exercise of governmental powers, in a position to invoke the Fourteenth Amendment as against the state itself or its agency duly created and empowered by the legislature to take over the possession and use of municipal property?

A municipality is merely a department of the state, a political subdivision created as a convenient agency for the exercise of such governmental powers as may be entrusted to it. City of Trenton v. New Jersey, 262 U. S. 182, 43 S. Ct. 534, 67 L. ed. 937, 29 A. L. R. 1471. Absent constitutional restriction, the legislature may at its pleasure modify or withdraw any powers so entrusted to a city, hold such powers itself, or vest them in other agencies. Hunter v. City of Pittsburgh, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. ed. 151, 159, cited with approval in City of Trenton v. New Jersey, *supra*.

Minn. Const. art. 4, § 36, specifically preserves the right in the legislature to provide general laws paramount to home-rule charters. See State ex rel. Smith v. City of In-

ternational Falls, 132 Minn. 298, 156 N. W. 249; State ex rel. Erickson v. Gram, 169 Minn. 69, 210 N. W. 616.

The United States Supreme Court, speaking through Mr. Justice Butler in City of Trenton v. New Jersey, *supra,* said (262 U. S. 188, 43 S. Ct. 537, 67 L. ed. 941):

> "* * * This Court has never held that these subdivisions may invoke such restraints [the Fourteenth Amendment and the contract clause] upon the power of the State."

It further said in the same case (262 U. S. 189, 43 S. Ct. 537, 67 L. ed. 942), speaking of Town of East Hartford v. Hartford Bridge Co. 51 U. S. (10 How.) 511, 533, 534, 536, 13 L. ed. 518, 527-529:

> "* * * The reasons given in the opinion (pp. 533, 534) support the contention of the State here made that the City cannot possess a contract with the State which may not be changed or regulated by state legislation."

The opinion in City of Trenton v. New Jersey, *supra,* quoted with approval the exposition of the principles now under consideration contained in Hunter v. City of Pittsburgh, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. ed. 151, 159, as follows (262 U. S. 186, 43 S. Ct. 536, 67 L. ed. 941):

> "The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or con-

tract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. * * * The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

And still further in the City of Trenton case, in speaking of the distinction made in tort cases between proprietary and governmental purposes, the court said (262 U. S. 192, 43 S. Ct. 538, 67 L. ed. 943):

"* * * But such distinction furnishes no ground for the application of constitutional restraints * * *. They do not apply as against the State in favor of its own municipalities."

A city holds its property for public purposes whether in furtherance of a proprietary or governmental purpose. It holds it subject to the paramount power of the legislature, whose creature it is. The answer to the question before us becomes simple in the light of a realization that the city is but a subdivision of the legislative branch of government and always subject to the paramount power of the legislature, its creator. The legal situation is no different from that where the state itself holds the property and subjects it to a different or greater use.

In State ex rel. School District v. County Board, 126 Minn. 209, 212, 148 N. W. 53, 54, this court said:

"* * * The case is controlled by the further rule that the legislature, having plenary control of the local municipality, of its creation, and of all its affairs, has the right to authorize or direct the expenditure of money in its treasury, though raised for a particular purpose, for any legitimate municipal purpose, or to

order and direct a distribution thereof upon a division of the territory into separate municipalities. * * * The local municipality has no such vested right in or to its public funds, like that which the Constitution protects in the individual, as precludes legislative interference. People v. Power, 25 Ill. 187; State Board of Education v. City, 56 Miss. 518. As remarked by the Supreme Court of Maryland in Mayor v. Sehner, 37 Md. 180: 'It is of the essence of such a corporation, that the government has the sole right as trustee of the public interest, at its own good will and pleasure, to inspect, regulate, control and direct the corporation, its funds, and franchises.' "

We therefore hold that c. 500, in authorizing the transfer of the use and possession of the municipal airport to the commission without compensation to the city or to the park board, does not violate the Fourteenth Amendment to the Constitution of the United States.

Order affirmed.

LORING, C. J.

APPENDIX B

No. 154 Hennepin County Per Curiam

33884

MART M. MONAGHAN, *Appellant*,

v.

MRS. MAUDE D. ARMATAGE, ET AL., Respondents,

THE MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Intervenors.*

Endorsed: Filed July 28, 1944. Grace Kaercher Davis, Clerk Minnesota Supreme Court.

On Petition for Rehearing

PER CURIAM:

Appellant now challenges the constitutionality of Ch. 500 as contravening Minn. Const. art. 4, § 34, which pro-

vides that "all such laws shall be uniform in their operation throughout the state." We find no lack of uniformity in the application of Ch. 500. It not only applies to all present and future contiguous cities of the first class but includes provisions for support of municipal airports which further the objectives of the act. Of course, if the appropriation made by the act is exhausted the legislature may or may not enlarge it as it is advised, but so long as the appropriation is available it appears it is applicable uniformly throughout the state. The legislature need not provide at this time for all future commissions which may come under the law.

Nor do we see any violation of the Fourteenth Amendment to the federal constitution, since we see no infringement of the equal protection clause. All are treated alike who come within the act.

Petition denied.

(5418)

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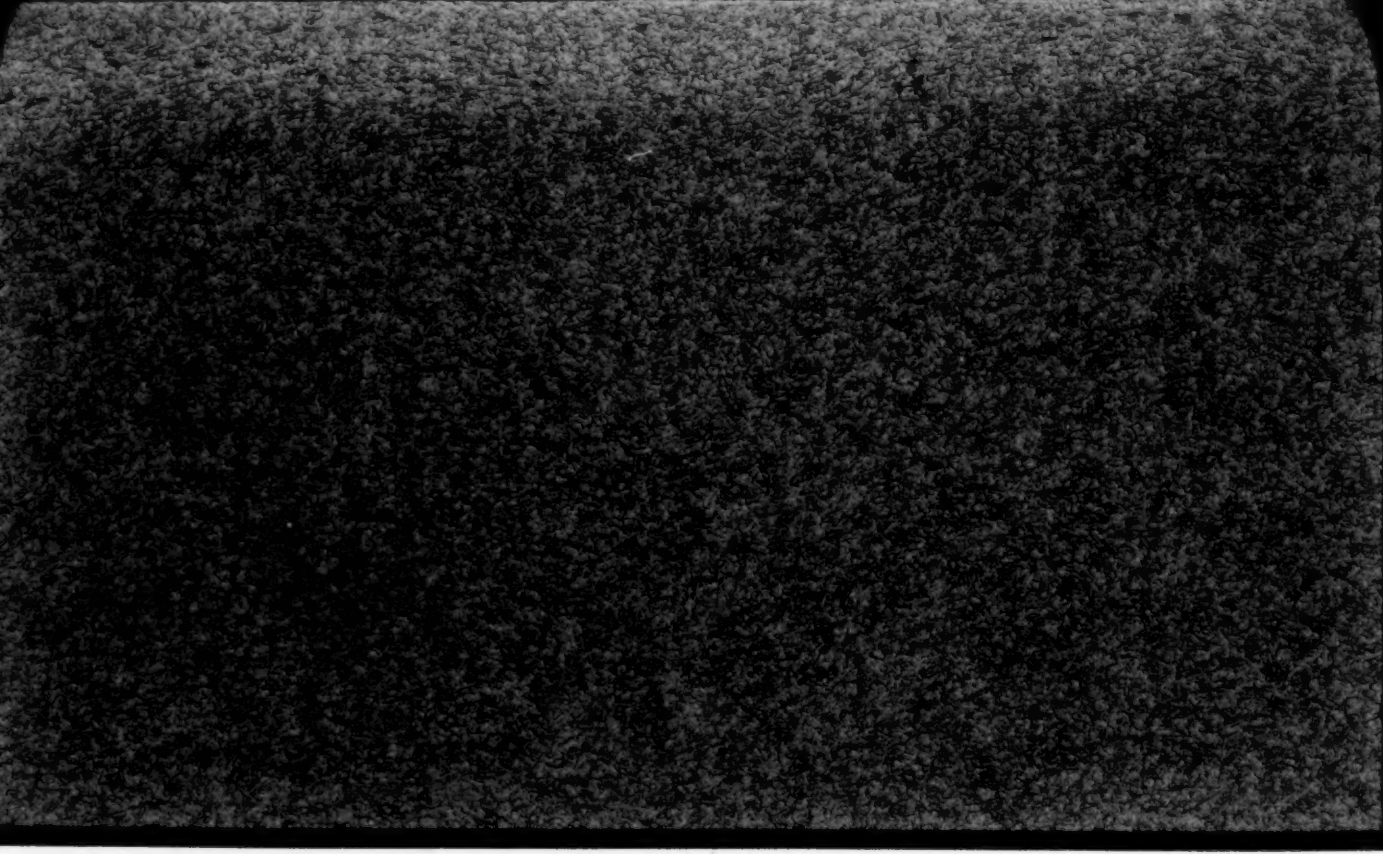

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL G. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

Appellees

COUNTER STATEMENT OF APPELLANT AS TO JURISDICTION

Appellees misconceive the whole purport of appellant's suit. This is not a suit by a city against a state. The City of Minneapolis is not a party to this suit. Appellant is a resident tax-payer, and brings this suit for himself and the other resident tax-payers against the members of the Minneapolis Park Board. The private property involved is the private property of appellant, in which he owns a vested

interest as a resident citizen of the city; and the private property of the other resident citizens in which they own a like vested interest.

Hazzard v. *Duff* (194) 287 Ky. 427.

> "Taxpayers of the municipality became the Owners of the business thus authorized to be conducted"—spoken of a brick building held by the court to belong to the city in its private or proprietary capacity, and which was held to be subject to execution on a judgment against the city.

The basis of jurisdiction of this court is that Minnesota Laws of 1943, Chapter 500, is claimed to be repugnant to the Federal Constitution but nevertheless was upheld as a valid law by the final judgment of the highest court of Minnesota. It is repugnant to the Federal Constitution because it takes vested private property from appellant and other resident taxpayers of Minneapolis without due process of law, and denies appellant and the other taxpayers the equal protection of the laws. Incidentally it takes the vested private property of the City of Minneapolis, which that city owns in its proprietary capacity, in like manner.

The city owns the property as trustee for the use and benefit of appellant and the other taxpayers. The city acquired and paid for the property in 1928, under authorization of Laws of Minnesota 1927, Chapter 62. It acquired it for the purpose of establishing and maintaining a municipal flying field, before there was any thought, much less any legislation, that such purpose was a governmental purpose, or any other than a private or proprietary purpose, as it is indeed today in the great majority of the states. The city was expressly authorized by Chap. 62, L. 1927, to lease portions of its private property so acquired "to the State of Minnesota or any branch of the state government for public purposes." The city became the vested owner of said

private property, as trustee for the use and benefit of appellant and of its other resident citizens. Neither the appellant and the other resident taxpayers, nor the city can be divested of such property without due process of law or without the equal protection of the laws.

We know of no previous decisions of this court holding that private property of resident taxpayers, or their vested private property rights, which they bought and paid for with their own money, can be so taken; or holding that they cannot invoke the protection of the due process and equal protection clauses of the 14th Amendment.

Neither *Hunter* v. *City of Pittsburgh, City of Trenton* v. *State of New Jersey,* nor *Williams* v. *Mayor of Baltimore,* cited in appellees' brief, so hold. They were all cases in which the city or the mayor of the city in his official capacity, were parties, and in which the individual taxpayers were not parties.

The cases of *Coleman* v. *Miller,* and *Patterson* v. *Stanolind Oil & Gas Company,* so cited, have no bearing at all on the question of taxpayers and their rights.

Hunter v. *City of Pittsburgh,* 207 U. S. 161, 52 L. Ed. 151 had reference only to governmentally owned property. It expressly declined to pass upon the right of a city to constitutional protection as to its privately owned property or that owned in its proprietary capacity. Significantly the *Hunter* case did not touch at all on a taxpayers interest in private or proprietary property of a city. *City of Trenton* v. *New Jersey,* 262 U. S. 182-67 L. Ed. 937 held that the state under its police power might impose a license fee as specified in the act; and it is elementary that if a state acts properly under its police power it is not controlled by any constitutional provision.

Justice Butler seems to base his decision on the case of *Hunter* v. *Pittsburgh,* 207 U. S. 161, which expressly de-

clined to discuss or rule upon the question of constitutional protection for privately owned property of a city.

He seems to rely also on *Pawhuska* v. *Pawhuska Oil Co.*, 250 U. S. 394, in which latter case the syllabus reads in part: "As respects grants to municipalities of governmental authority • • • the power of the states is not restrained by the contract clause of the constitution" and, in the opinion it is said:

> "It is not contended—nor could it well be—that any private right of the city was infringed."

With all due respect to Justice Butler, it seems that he incorrectly interpreted the cases of *Hunter* v. *Pittsburgh* (*supra*) and *Pawhuska* v. *Pawhuska Oil Co.* (*supra*), for he cites them as supporting propositions of law which they did not pass upon.

The *Trenton* case, furthermore, does not touch at all on a taxpayer's interest in private or proprietary property of a city.

The case of *Williams* v. *Mayor of Baltimore*, 289 U. S. 36, 77 L. Ed. 1015 passes upon no question involving the rights of a taxpayer in municipally owned private property as distinguished from governmental property. That case was concerned solely with a governmental function and a governmental necessity of relieving the burdens of a railroad "which supplied the only rail service to Annapolis, the capital of the state".

The case of *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231, holding that if appellant fails to raise a substantial question in the light of previous decisions, the appeal will be dismissed, has otherwise no bearing whatever on the propositions in the instant case. It held that the owner-lessor of the mineral rights in a tract of land, on which was a producing oil well, was not deprived of property rights in violation of the 14th Amend-

ment, nor were his contractual rights impaired by an order made under the Well Spacing Act of Oklahoma, and, that the questions having been decided many times before, the appellant did not raise a substantial Federal Question.

Likewise entirely inapplicable is the case of *Coleman* v. *Miller*, 207 U. S. 433, 83 L. Ed. 1385. It is a case in which this court refused to dismiss a writ of certiorari (437) on the ground that twenty senators of Kansas, who voted against the ratification of the Child Labor Amendment, had "no standing to seek to have the judgment of the state court reviewed" * * * "We find the cases cited in support of the contention, that petitioners lack an adequate interest to invoke our jurisdiction to review, to be inapplicable * * * we think these senators have a plain, direct and adequate interest in maintaining the effectiveness of their vote."

II

Appellant, suing as a resident taxpayer, injured and affected adversely and subjected to an unwarranted and illegal burden, and deprived of his vested property, who has suffered by the decision of the state court in favor of the validity of the statute, has, as such, sufficient personal, legal interest in the question of Federal constitutionality of Minnesota Laws 1943, Chapter 500, to warrant his invoking the provisions of the Federal Constitution. In addition to suing in his own right he sues for the benefit of all the other resident taxpayers of Minneapolis, and, as such, has a right to invoke the 14th Amendment of the Federal Constitution.

Crampton v. *Labriskie*, 101 U. S. 601 (608-609). "The present suit, therefore, is brought by other taxpayers of the county * * *"

> "Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal

> disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay, there is at this day no serious question."

Of the cases cited by appellees in supoprt of their contention that a taxpayer, as such, has no legal interest in the questions raised, it is interesting to note the statement made in *Coleman* v. *Miller,* 307 U. S. 433 (445):

> "While one who asserts the mere right of a citizen and taxpayer of the United States to complain of the alleged invalid outlay of public moneys has no standing to invoke the jurisdiction of the federal courts (Frothingham v. Mellon, 262 U. S. 447) the court has sustained the more immediate and substantial right of a resident taxpayer to invoke the interposition of a court of equity to enjoin an illegal use of moneys by a municipal corporation. Crampton v. Zabriskie 101 U. S. 601, Frothingham v. Mellon, supra. In Heim v. McCall 239 U. S. 175 we took jurisdiction on a writ of error sued out by a property owner and taxpayer, who had been given standing in the state court, for the purpose of reviewing its decision sustaining the validity under the Federal Constitution of a state statute as applied to contracts for the construction of public works in the City of New York, the enforcement of which was alleged to involve irreparable loss to the city and hence to be inimical to the interests of the taxpayer."

In *Stewart* v. *Kansas City,* 239 U. S. 14, 60 L. Ed. 120, another case cited by appellees to that point, this court does not hold that a taxpayer has no personal interest in the litigation but says (16):

> "Plaintiff in error is not impleaded as a taxpayer nor does he defend as such. He is sued as a county officer and defends by virtue of the exercise of his functions as a county officer * * * He certainly has no personal interest in the litigation."

The case of *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, simply holds one who would strike down a statute as violative of the Federal Constitution must show that the unconstitutional feature of the law injures him and so operates to deprive him of rights protected by the Federal Constitution. And that is exactly what the appellant in this case has done. One unconstitutional feature is the taking without compensation rentals of $16,800.00 a year to plaintiff's personal damage. Another is the imposition of the burden of paying of to-wit, $367,000.00 in bonds and interest which plaintiff and his fellow taxpayers must bear, and which, but for the passage of Chapter 500, Minnesota Laws 1943, they would not have to pay.

The case of *Roberts & Schaffer Co.* v. *Emmerson*, 271 U. S. 50, merely reiterates the proposition that a corporation challenging a law on the ground that it violates the equal protection clause cannot rely on theoretical inequalities, or, such as do not affect it but must show that it is itself affected unfavorably by the discriminations of which it complains.

> "The plaintiff cannot complain that the tax is measured by authorized, instead of issued, capital stock, because all of its authorized capital stock has been issued."

The case of *Columbus & Greenville Ry.* v. *Miller*, 283 U. S. 96, reiterates that a state official, attacking, as such official, a statute of his state, has no such personal interest as will warrant his invoking the Fourteenth Amendment.

> "The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."

The case of *Coleman* v. *Miller*, 307 U. S. 433, we have already commented on at length and it seems to favor us entirely.

III

As to the suit being moot, it is only when any adjudication which this court might make would be ineffectual for any purpose that a cause becomes moot; when there is nothing upon which any order of the court can operate; when the thing sought to be prohibited has been done and cannot be undone by any order of this court.

The appellees themselves have furnished the complete answer to their contention. The Minneapolis-St. Paul Metropolitan Airports Commission intervened in this suit, and made itself a party to the suit. It has joined with the other defendants in this very appeal, and is itself a party to this appeal.

The thing sought to be prohibited was the transfer of the use, occupation, rentals, controls, etc., of the Minneapolis Municipal Airport to the Minneapolis-St. Paul Metropolitan Airports Commission. That has been done. But the transfer having been made to one of the parties to this appeal, this court can by its order compel the transferee to re-transfer the property back to its original owner.

It is conceded that this court is not disposed to decide moot questions, or abstract propositions.

The case of *Tyler* v. *Judges,* 179 U. S. 405, 45 L. Ed. 252, cited by appellees makes that declaration, but makes no comment pertinent at all to the instant case, on what constitutes a moot question.

The case of *Jones* v. *Montague,* 194 U. S. 147, 48 L. Ed. 913, does not aid the appellees, because the transferee of the airport, its control, use and rentals has made itself a party to this suit and is a party to this appeal, and this court may order it to reconvey the airport, etc., back to the Minneapolis Park Board. That suit was one in prohibition, restraining and enjoining the defendants "as board of state canvassers" from canvassing the election returns, declar-

ing the result, and giving certificates to the parties found to be elected. The opinion, in stating the facts, recites:

> "After answer by defendants the writ of prohibition was denied by the Circuit Court and the petition dismissed. The dismissal was based on a want of jurisdiction, whereupon the petitioners brought the case on error directly to this court. A motion has here been made to dismiss the writ of error on the ground that everything sought to be prohibited has already been done, AND THAT THERE IS NOTHING UPON WHICH ANY ORDER OF THE COURT CAN OPERATE."

The opinion, in deciding the case, recites:

> "But * * * the thing sought to be prohibited has been done AND CANNOT BE UNDONE BY ANY ORDER OF COURT. The canvass has been made, certificates of election have been issued, the House of Representatives * * * has admitted the parties holding the certificates to seats in that body, and any adjudication which this court might make would be only an ineffectual decision of the question whether or not these petitioners were wronged by what has been fully accomplished."

In the case at bar this court may make its adjudication that appellant has been wronged, and the court may right that wrong and compel the Minneapolis-St. Paul Metropolitan Airports Commission, a party to this appeal, to retransfer to the Minneapolis Park Board the use, occupation, rentals and control of the Minneapolis Municipal Airport a. k. a. the Wold-Chamberlain field.

The case of *In re Lincoln*, 202 U. S. 178, 50 L. Ed. 984 was one in which the petitioner's term of imprisonment had expired, and the court was powerless to do anything.

The case of *Chandler* v. *Wise*, 307 U. S. 474, held that certiorari should be dismissed because: "After the Governor of Kentucky had forwarded the certification of the ratification of the amendment to the Secretary of the United States

there was no longer a controversy susceptible of judicial determination".

The case of *St. Pierre* v. *U. S.*, 319 U. S. 41, was another instance of the sentence of the petitioner having been fully served, and any order this court might make would be ineffectual for any purpose.

IV

As to appellees' claim that the judgment of the Minnesota Supreme Court is not a final judgment, we have but to cite the case of *North Carolina R. R.* v. *Story*, 268 U. S. 288. Syllabus—"A judgment of a state supreme court affirming the refusal of a lower court to continue a temporary restraining order and to grant a permanent injunction on the petition and answer, and leaving nothing for the lower court to do but dismiss the petition, *held* a final judgment and reviewable by certiorari under Jud. Code Sec. 237, as amended September 6, 1916."

The case of *Vicksburg Water Works Co.* v. *Yazoo & Mississippi Valley R. Co.*, 220 U. S. 601, cited by appellees, was evidently a case in which there had been a remand for further proceedings and there was still another appeal to be taken to the Supreme Court of the state in order to make a "final judgment" from which a writ of error would lie. As to the right to a review as to what is included in the term "suit" and as to what constitutes a final judgment, see *Weston* v. *Charleston*, 2 Peters 449.

General Argument

Questions cannot be said to be unsubstantial which affect every city, large and small, throughout the nation; and, affect the millions of dollars worth of property which they own in their proprietary capacity, and which they own as trustees of their resident taxpayers; and which affect

private property rights, legal and equitable, of millions of the citizens of the United States.

The very pronounced language of the Minnesota Supreme Court, answering one question in this case by citation of *City of Trenton* v. *State of New Jersey*, 262 U. S. 182, and *State* v. *County Board*, 126 Minn. 209, cannot be overlooked by any interested citizen living in a municipal corporation in any state of this union. The syllabus of the *Trenton* case sufficiently expresses the effect of the decision:

> "The distinction between a municipality as an agent of the State for governmental purposes, and as an organization to care for local needs in a private or proprietary capacity, affords no ground for the application of those constitutional restraints against a State in favor of its own municipality."

At page 186 of the *Trenton* case, the court cites *Hunter* v. *Pittsburgh*, 207 U. S. 161, 178, 179, as authority for the principle announced in that case. Reference to *Hunter* v. *Pittsburgh* will show that the question upon which it was cited as an authority was not before the court in that case—that is, the constitutional protection afforded the City of Allegheny if it held property in its proprietary capacity. The court was careful to say that such question was not before the court and that the record did not disclose that the City of Allegheny held property in its proprietary capacity, and yet *Hunter* v. *Pittsburgh* was cited as the basic authority for the decision in the *Trenton* case.

The *Trenton* case could have been decided and disposed of upon other principles. The *Trenton* case involved a law of the State of New Jersey relative to taxation, and the only claim for constitutional protection was that the City of Trenton was being denied the equal protection of the law. Yet, the whole subject was one of taxation, and governmental in character, and did not compel a decision well nigh permanently making municipal corporations an exception

to the persons protected by the due process clause of the Fourteenth Amendment to the Constitution of the United States; and that is just what the declaration in the *Trenton* case is. It makes an exception of municipal corporations to the persons protected by the Fourteenth Amendment.

We feel it is also necessary to say that the decision of the Minnesota court here appealed from cites as authority in its own state only *State* v. *County Board,* 126 Minn. 209, which case relates to a decision of the Minnesota court in a matter involving public education, always a governmental matter and never involving the holding of property in a proprietary capacity—that is, so far as I can readily determine. I do not know of a case where a school district secures revenues and holds property in its proprietary capacity.

A very substantial percentage of the population of the United States resides in the big cities, and if this court now again unnecessarily repeats what we consider the erratic conclusions of the *Trenton* case, then again the door of constitutional protection is slammed in their faces.

We do not feel that this case required the answer given by the lower court, nor that this court should, without discussion and thorough consideration, give any brief answer based upon the *Trenton* case. Feeling so seriously about it, we will briefly review the problem as it has developed from the beginning.

While we may cite authority and court decisions relative to early English history and developments from the Magna Charta to the adoption of our federal constitutional provisions, we think it is sufficient to say that the conflict in England was fundamentally one of Parliament and the people against the abuses of the Crown, and that the phrase, "due process of law," there differently expressed but followed into and made a part of state constitutions, was that if the people were to be deprived of their property, they pre-

ferred that be done pursuant to act of Parliament and what was common law—"due process." In other words, if they had to lose their rights and privileges and property, they preferred to have it done by legislation rather than by decree; and yet ownership of property was very closely followed and protected in British common law.

The revolutions of 1640 and 1680, best interpreted by Blackstone, indicate that there was more in the phrase, "due process of law," than a mere desire to have an abuse committed by Parliament rather than the King in Council. We believe as good a summary of the general principles of what was property and how it was protected in private hands and in public hands, as can be found, is Daniel Webster's argument to the court in the *Dartmouth College* case. We believe the *Dartmouth College* case was decided the way it was because the only provision of the Constitution of the United States that could be easily applied to protect the trustees of Dartmouth College was that of Section 10, Article 1, of the Constitution of the United States, that no state shall "pass any bill * * * or law impairing the obligations of contracts * * *." The Supreme Court of the United States did not have before it in such case the broad provisions of the Fourteenth Amendment subsequently adopted. The court arrived at the conclusion that the territorial grant to the trustees of Dartmouth College took on the form of contract, and therefore the act of the New Hampshire legislature had the effect of impairing this contract; and yet, in discussing the case, Daniel Webster covered the entire field, including discussion of the case of *Terrett* v. *Taylor*, which outlined the distinctions between private corporations and public corporations, but announced, without question, that where public corporations held property that they had paid for and which was held in their proprietary capacity, the legislature must compen-

sate the municipal corporations, the people who had expended the money and who owned the property.

The Fifth Amendment to the Constitution of the United States was being interpreted, and we think properly, not to apply to the activities of the state, but only to the activities of the general government; but, by the adoption of the Fourteenth Amendment to the Constitution of the United States, the same principles as involved in the Fifth Amendment were specifically applied to the actions of the state, and by said amendment it was provided that no state shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." For many years after the Fourteenth Amendment it was narrowly viewed, but in 1882 Roscoe Conklin pointed out that the Fourteenth Amendment was much more than a protection to the colored man and his property—that it applied to and covered all abuses committed by the states. He pointed out that at the time of the adoption of the Fourteenth Amendment there were innumerable complaints before the Congress of the United States against abuses within the states, and we emphasize that Article 14 includes no exceptions to the protection it affords.

We do not need to cite authority that a municipal corporation is a person, that it may own and hold property, and, in many cases, it does.

The charter of the City of Minneapolis—Section 1 of Chapter I, provides as follows:

> "All that district of country in the County of Hennepin and State of Minnesota, contained within the limits and boundaries hereinafter described, shall be a city by the name of Minneapolis, and all the people now inhabiting and those who shall hereafter inhabit the said district shall be a Municipal Corporation by the name of the 'City of Minneapolis,' and by that name may sue

and be sued, plead and be impleaded, in any court; make and use a common seal and alter it at pleasure; take and hold, lease and convey all such real, personal and mixed property as the purposes of the corporation may require, or the transaction or exigencies of the business may render convenient within or without the limits of such district; shall be capable of contracting and being contracted with, and shall have all the general powers possessed by Municipal Corporations at common law, and in addition thereto shall possess all powers hereinafter specifically granted, and all the authorities thereof shall have perpetual succession."

We are not here seeking to convince this court that every comparatively trivial claimed deprivation of property should be permitted to encumber the calendar of this court, but we respectfully insist that there may come a time when the people of the great city of New York, owning and holding property, may be deprived of this property held by the City of New York in its proprietary capacity. The legislature may take away from the people of the City of New York property that they have paid for, that they own, and that they should not be deprived of.

To emphasize the attitude of some quite distinguished jurists in state courts upon this subject, may we call attention to the case of *Shirk* v. *Lancaster City,* 313 Pa. 158, a case decided in the great state of Pennsylvania in which arose the controversy expressed in the title, *Hunter* v. *Pittsburgh,* 207 U. S., the decision in which case was erroneously interpreted in the *Trenton* case. The Pennsylvania Supreme Court, by unanimous decision, arrives at a conclusion contra to the interpretation given *Hunter* v. *Pittsburgh* in the *Trenton* case. Its conclusion is sufficiently expressed in the title, paragraphs 1, 2 and 3:

"1. Neither the legislature nor the courts can prohibit a municipal water plant from making a profit.

"2. The legislature's control of the property of a municipality acquired in its proprietary or private character is limited; all the property of the municipality of a distinctly private character is protected by the constitutional provision protecting private property of an individual or private corporation, and revenues derived in its private capacity cannot be controlled or taken directly for state purposes even if such revenues are used for public purposes.

"3. Property employed by a municipality in furnishing water to its inhabitants is not used for governmental purposes, and in its ownership and operation the municipality acts in its proprietary character."

May we call attention to the court's discussion of the principles, at pages 162 to 166, inclusive, and its citation of authority for its conclusions.

Before further calling the court's attention to state decisions, may we just emphasize at this point that the Declaration of American Independence contains a great number of abuses of the Crown with which the people of the colonies were keenly familiar. Is it possible that as a result of the revolution against such abuses by the Crown we have now adopted a form of government in America which merely transfers the power to commit such abuses from the Crown of England to the legislatures of the various states? We insist that no such intention appears in the Declaration of Independence or in the early drafts of the American Constitution, nor is such view supported by any citation of authority from Blackstone, the generally accepted authority on the common law as it existed at the time of the adoption of our federal constitution.

A quite good history of early development is contained in "Origin and Growth of the American Constitution," by Hannis Taylor, last published in about 1908. His review of the actual character of the development of the common

law municipal corporation is quite thorough and is singularly devoid of anything that would indicate that we, by the adoption of our constitution, merely changed oppressors.

From the language of the Fourteenth Amendment, we feel this court can be just as frank in discussing the scope of such amendment as Justice Butler was in the *Trenton* case, only, we hope, not as biased. Justice Butler says upon pages 191 and 192 of the *Trenton* case, 262 U. S., in discussing distinction between governmental powers of municipal corporations and those permitted if they occur in a proprietary capacity:

> "The basis of the distinction is difficult to state, and there is no established rule for the determination of what belongs to the one or the other class. It originated with the courts. Generally it is applied to escape difficulties, in order that injustice may not result from the recognition of technical defenses based upon the governmental character of such corporations."

And then he goes on to say flatly they do not apply as against the state in favor of its own municipalities. Why, if the court please, that was the position of the King of England—that he had sovereign powers and that as against such sovereign powers, the people of the colonies had neither legal nor moral right. The colonists enumerated some of the abuses, and there followed revolution. The colonies, forming into states, adopted various constitutional provisions which were intended to, and did, carry with them the principles contended for during the progress and evolution of common law from the Magna Charta to the date of the adoption of those constitutions and the federal constitution.

Nowhere can we find anything which justified a decision of this court saying that a municipal corporation is ex-

cepted from the protection of the Fourteenth Amendment to the Constitution of the United States. Any such conclusion, we respectfully insist, is advanced solely by individual human beings who happen to have written, or are writing, judicial decisions, as so frankly admitted by Justice Butler as to distinctions between governmental activities and those with reference to the property of municipal corporations.

To respectfully point out how human beings may differ in their pronouncements, may we call attention to the decision of the Supreme Court of Minnesota in this case citing only the *Trenton* case and a school district case in Minnesota, by citing other pronouncements of the Minnesota Supreme Court. These cases, of course, do not control this court in interpreting the Fourteenth Amendment, and yet the Fourteenth Amendment in terms is generally the same as constitutions of the states as to civil rights and due process; and they are interesting as indicating the mental conclusions of other human beings acting in their judicial capacity. May we call attention to the following language in *State* v. *Bruce*, 50 Minn. 491, 494-495:

> "The question presented is the constitutionality of the act of 1891. This involves a consideration of the power of the legislature to control, dispose of, and summarily deprive a municipal corporation of the funds which it has already acquired by lawful means and for legitimate purposes, the inevitable result of such legislation being further and increased taxation of the people, that the funds thus diverted and disposed of may be restored and replaced in the municipal treasury. The validity of legislation of this same general character is not altogether a new question in this court, and while it has heretofore been admitted that the legislative control and power over towns, cities and counties, and consequently over their property and funds, is very great, it has not by any means

been conceded that this control and power are without limit, or so transcendent that the lawmakers may arbitrarily take away the private property of a municipality, or, at will, appropriate or direct to be used its lawfully acquired private funds to liquidate a claim which it did not owe in any just sense, and was not morally or equitably bound to pay. It was well said in State v. Foley, 30 Minn. 350 * * * that a legislative enactment that the property of a county, acquired and held by it for its own general benefit, shall be gratuitously bestowed upon any person or class of persons is not legislation, but has been defined as a decree under legislative forms. If, then, the payment provided for be a pure gratuity—a taking of money of the municipality in order that it may be given to a private person—the legislation which requires it cannot be upheld."

See, also:

Deering Co. v. *Peterson,* 75 Minn. 118, 124;
Minnesota Sugar Co. v. *Iverson,* 91 Minn. 30, and cases cited therein;
State v. *Foley,* 30 Minn. 350;
Behrens v. *City of Minneapolis,* 199 Minn. 363.

Lack of uniformity of taxation has been held to be in violation of the equal protection clause of the 14th Amendment of the Federal Constitution.

Sioux City v. *Dakota County,* 260 U. S. 441, 445.

The *Sioux City Bridge Company* case, 260 U. S. 441, above cited, emphasizes what we consider the absurdity of the distinction made in the *Trenton* case. That court clearly holds, at page 445, that:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the states jurisdiction against intentional and arbitrary discrimination, whether occasioned by ex-

> press terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. (Citing authority)"

Here, again, this court says that an individual has the protection of the Fourteenth Amendment. Is it possible that the 490,000 people of the City of Minneapolis have no such protection? Is any such exception expressed in, or can it be implied, from the provisions of the Fourteenth Amendment?

We insist that the court, in *State* v. *Bruce,* 50 Minn. 491, above cited, more clearly expressed than the *Trenton* case and the decision of the Minnesota court in this case, a correct attitude towards arbitrary action. We repeat the Minnesota court language:

> "It was well said in State v. Foley, 30 Minn. 350 * * * that a legislative enactment that the property of a county, acquired and held by it for its own general benefit, shall be gratuitously bestowed upon any person or class of persons is not legislation, but has been defined as a decree under legislative forms."

That was our conclusion as to the acts of the Crown at the time of the writing of the Declaration of Independence, and we again respectfully insist that there is no evidence anywhere that we, by the adoption of the Constitution of the United States and the Fourteenth Amendment, again expressing in broad terms civil rights and the protection of the people against actions of the states, ever intended to exempt from the protection of the Fourteenth Amendment the people residing in municipal corporations in the United States.

We note that counsel for appellees cites *Coleman* v. *Miller*, 307 U. S. 433, as supporting the *Trenton* case. Hasty reading by us does not move a conclusion that this case is any nearer to the question here discussed than the *Trenton* case was to *Hunter* v. *Pittsburgh*. With all due respect for human beings who write judicial decisions, we have often pointed out how precedent is first established, then a second decision is based on the first, a third on the second, and a fourth on the third, until the final discussion bears no more relation to the original problem than the product of a carpenter created by such method does in cutting rafters for a building. A carpenter cuts a rafter according to measurement and marks the rafter and saws it. Then some carpenters cut the second rafter by using the first, a third by using the second rafter, a fourth by using the third rafter, and so on up until the end of the building; and when the carpenter gets through cutting rafters, the last rafter is sometimes an inch longer than the first.

We respectfully suggest that the citation of cases following and erroneously based upon *Hunter* v. *Pittsburgh* bear about the same deviations. We respectfully suggest that these cases cited by counsel for appellees to support the conclusion of the Minnesota Supreme Court are but hasty adventures in metaphysics. We prefer to treat due process of law as expressed in the Fourteenth Amendment in the same manner as such phrase is treated in various state constitutions, as it is treated in the magnificent discussion of Webster before the court in the Dartmouth College case, and as it is treated in common law discussions from the Magna Charta to the adoption of the Constitution of the United States, drawing much inspiration from Blackstone.

May we just call attention to another startling thing to us. A public utility privately owned is generally created

or authorized by act of the legislature, and, in Minnesota, may have as low as three directors. This utility then is a creature of the state, but the effect of the *Trenton* case is that those three people, also inaugurating, constructing and operating a public utility, have the protection of the Fourteenth Amendment, but the City of Minneapolis, a home rule charter city authorized by the constitution of the state, somewhat erroneously said to be the creature of the state, and having 490,000 people, has no such protection. We fail to find anything in the Fourteenth Amendment justifying such distinction.

Respectfully submitted,

MARK M. MONAGHAN,
Acting pro se.

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ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

PAUL J. THOMPSON,
ABBOTT L. FLETCHER,
W. H. OPPENHEIMER,
MONTREVILLE J. BROWN,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT BY APPELLEES OF GROUNDS IN OPPOSITION TO APPELLATE JURISDICTION OF ABOVE COURT AND IN THE ALTERNATIVE MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT OF THE LOWER COURT

The appellees state the following matters and grounds against the jurisdiction of this court as asserted by the appellant herein, in his statement of the bases of the appel-

late jurisdiction, filed herein on the 8th day of November, 1944, as required by Rule 12 of the Supreme Court:

1. Appellant in his statement bases jurisdiction of the above court on the ground that the Minnesota Statute attacked takes property from the City of Minneapolis, a municipal corporation organized under the laws of the State of Minnesota, without due process and also denies to that city the equal protection of the laws, in violation of the provisions of the 14th Amendment to the Federal Constitution. Under previous decisions of the above court, the due process and equal protection clauses of the 14th Amendment are not invocable on behalf of municipal corporations. Because of these decisions appellees contend that appellant fails in his statement of bases of appellate jurisdiction to raise a substantial federal question and that by reason of this there is want of jurisdiction.

In support of this contention appellees cite the following cases:

Hunter v. *City of Pittsburgh*, 207 U. S. 161, 52 L. ed. 151, 28 Sup. Ct. Rep. 40;

City of Trenton v. *State of New Jersey*, 262 U. S. 182, 67 L. ed. 937, 43 Sup. Ct. Rep. 534 and 29 A. L. R. 1471;

Williams v. *Baltimore*, 289 U. S. 36, 77 L. ed. 1015, 53 Sup. Ct. Rep. 431;

Coleman v. *Miller*, 307 U. S. 433, 83 L. ed. 1385, 59 Sup. Ct. Rep. 972;

Patterson v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 83 L. ed. 231, 59 Sup. Ct. Rep. 259.

2. Appellant sues as a taxpayer and as such has not such legal interest in the question whether or not the statute atacked is constitutional under the Federal Constitution,

sufficient to enable him to invoke the appellate jurisdiction of the above court.

In support of this contention appellees cite the following cases:

Stewart v. *City of Kansas City*, 239 U. S. 14, 60 L. ed. 120, 36 Sup. Ct. Rep. 15;

Standard Stock Food Co. v. *Wright*, 225 U. S. 540, 56 L. ed. 1191, 32 Sup. Ct. Rep. 784;

Roberts & Schaefer Co. v. *Emmerson*, 271 U. S. 50, 70 L. ed. 827, 46 Sup. Ct. Rep. 375;

Columbus & Greenville Ry. Co. v. *Miller*, 283 U. S. 96, 75 L. ed. 861, 51 Sup. Ct. Rep. 392;

Coleman v. *Miller*, 307 U. S. 433, 441, 83 L. ed. 1385, 1390, 59 Sup. Ct. Rep. 972.

3. The suit is now moot. It is one to restrain the members of the Board of Park Commissioners of the City of Minneapolis, a department of the government of the city, "from turning over, surrendering, conveying, transferring, assigning, selling or giving" the Minneapolis Municipal Airport (Wold-Chamberlain Field) to the Minneapolis-St. Paul Metropolitan Airports Commission as provided and required under the statute attacked. The constitutionality of the statute was raised on appellant's motion for a temporary injunction and appellees' demurrer to the complaint. There was a restraining order. The trial court denied the motion, sustained the demurrer and vacated the restraining order. On appeal to the Supreme Court of the State of Minnesota, that court affirmed the action of the lower court in a decision handed down on July 28, 1944. Judgment of affirmance was entered in that court on August 12, 1944. Thereafter and on or about August 15, 1944, pursuant to said statute and a written instrument as to details, executed by said City of Minneapolis, acting through its said Park

Board, and said Minneapolis-St. Paul Metropolitan Airports Commission on the 14th of August, 1944, said airport, equipment and appurtenances were transferred to said Minneapolis-St. Paul Metropolitan Airports Commission, and said commission has been at all times since and is now in possession thereof and operating the same pursuant to and in accordance with said statute. The acts sought to be restrained have been performed by the appellees, and as a consequence there is nothing now upon which the action can operate. The case is moot.

In support of this contention appellees cite the following cases:

Tyler v. *Judges of the Court of Registration,* 179 U. S. 405, 409, 45 L. ed. 252, 21 Sup. Ct. Rep. 206;

Jones v. *Montague,* 194 U. S. 147, 48 L. ed. 913, 24 Sup. Ct. Rep. 611;

Re Lincoln, 202 U. S. 178, 50 L. ed. 984, 26 Sup. Ct. Rep. 602;

Chandler v. *Wise,* 307 U. S. 474, 83 L. ed. 1407, 59 Sup. Ct. Rep. 992;

St. Pierre v. *United States,* 319 U. S. 41, 87 L. ed. 1199, 63 Sup. Ct. Rep. 910.

4. The judgment of the Supreme Court of the State of Minnesota sustaining appellees' demurrer to appellant's complaint and vacating the restraining order, is not a final judgment or decree reviewable in the above court on appeal.

In support of this contention appellees cite the following case:

Vicksburg Water Works Co. v. *Yazoo & Mississippi Valley R. R. Co.,* 220 U. S. 601, 55 L. ed. 603, 31 Sup. Ct. Rep. 715.

On the foregoing matters and grounds against the jurisdiction of the above court, appellees move said court to dismiss with costs the appeal taken herein.

Such statement and motions are submitted on all the files and records herein and on the affidavits hereto attached and made a part hereof, marked Exhibits A and B.

And said appellees move this court in the alternative to affirm the judgment from which said appeal purports to have been taken because although the record in said cause may show that this court has jurisdiction in the premises, yet it is manifest that the questions on which the decision of the case depends are so unsubstantial as not to need further argument.

Dated November 18th, 1944.

Respectfully submitted,

PAUL J. THOMPSON,
ABBOTT L. FLETCHER,
610 Midland Bank Bldg.,
Minneapolis, Minnesota, and
W. H. OPPENHEIMER,
MONTREVILLE J. BROWN,
W 1781 First National Bank Bldg.,
St. Paul, Minnesota,
Counsel for Appellees.

EXHIBIT A

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN, *Appellant,*

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK and WASHINGTON YALE, and MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Appellees*

Affidavit

STATE OF MINNESOTA,
County of Hennepin, ss:

Francis A. Gross and Charles E. Doell, being first duly sworn, depose and say: that they are respectively the president and the secretary of the Board of Park Commissioners of the City of Minneapolis, and they held their respective positions on August 1st, 1944, and ever since have and do now occupy the same positions at the time of the making of this affidavit.

That on the first day of August, 1944, as appears from the certified copy of the minutes of the regular meeting of the Board of Park Commissioners on August 2, 1944, the special committee on Aviation, and the standing committees on Finance, Improvements and Designation and Acquisition of Grounds, acting jointly, respectfully reported to the Board of Park Commissioners, a resolution which was passed by ten yeas and one nay at the regular meeting of said Board on August 2, 1944, all as appears from the certified copy of said minutes of the meeting of August 2, 1944, attached hereto and made a part hereof.

That pursuant to the report of said committees and said resolution so adopted by said Board of Park Commissioners August 2, 1944, the said affiants, as president and as secretary of said Board, on behalf of the City of Minneapolis, acting by and through its Board of Park Commissioners, executed and delivered the two contracts described in said resolution and which were submitted to the Board of Park Commissioners at said meeting, each contract being dated August 14, 1944, and being with the Minneapolis, St. Paul Metropolitan Airports Commission, the said contracts being in all respects as authorized by said Resolution of August 2, 1944. That at the time of the execution and delivery of said contracts and pursuant thereto, the Board of Park Commissioners and the City of Minneapolis acting by and through its Board of Park Commissioners, turned over the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to the terms of Chapter 500, of the Session Laws of Minnesota for 1943, and all the personal property used in connection with said airport, was also transferred at said time and this transfer of title was absolute, and ever since the 15th day of August, 1944, the said Minneapolis, St. Paul Metropolitan Airports Commission has had, and now has, the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to said Chapter 500, and the ownership of said personal property.

FRANCIS A. GROSS,
CHAS. E. DOELL.

Subscribed and sworn to before me this 15 day of November, 1944.

CHAS. A. HEARN,
[Seal.] *Notary Public, Hennepin County, Minn.*

My commission expires Oct. 6, 1950.

EXHIBIT A-1

BOARD OF PARK COMMISSIONERS

REGULAR MEETING

August 2, 1944

Office of the Board of Park Commissioners,

Minneapolis, Minn.,
August 2, 1944.

President Gross in the chair.

Present—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Absent—Commissioners Kline, Knight, Tearse and Christensen—4.

Commissioner Yale—

Moved that the reading of the minutes of the regular meetings of June 21, July 5, and July 19, 1944, and the annual meeting of July 17, 1944, be dispensed with and that the minutes as printed be approved.

Adopted.

Petitions and Communications

From the City Treasurer—

Reporting cash deposited during the month of July, 1944, as follows:

Park Operating Fund:

Accounts Receivable		
Outside Parties	$ 766.51	
Inter-Fund	519.56	1,286.07
Revenue—Park Trucks		5,610.55
Revenue—Refectories		
Calhoun Baths	$1,783.60	
Calhoun Boats	3,017.79	
Harriet	4,453.35	
Minnehaha	6,045.41	
Nokomis	3,215.40	18,515.55

Revenue—Golf Courses		
Armour	$4,413.34	
Columbia	6,023.06	
Hiawatha	4,323.71	
Meadowbrook	1,791.77	
Theo. Wirth	4,885.62	21,437.50
Revenue—Airport Refectory		14,742.58
Total Park Operating Fund		$61,592.25

General Fund:

Accounts Receivable		
Outside Parties		$1,227.50
Revenue—Court Fines		56.00
Revenue—Boat and Canoe		
Licenses		36.00
Revenue—Baths		
Calhoun	$1,223.75	
Nokomis	486.25	
Webber	172.90	
Wirth	50.00	1,932.90
Revenue—Boats		
Calhoun	$4,695.45	
Harriet	1,329.25	6,024.70
Revenue—Gateway Station		28.55
Total General Fund		$9,305.65

Airport Fund:

Accounts Receivable		
Outside Parties	$7,292.67	
Revenue—General	23.65	
Total Airport Fund		$7,316.32

Playground Fund:

Accounts Receivable	
Outside Parties	600.00
Total all funds	**$78,814.22**

From the City Comptroller—

Reporting taxes credited to various park funds during the month of July, 1944, as follows:

Park General Fund	$44,504.12
Park Playground Fund	13,415.19
Street Forestry Fund	1,312.01
Airport Maintenance Fund	70.05
Acquisition Fund	4,632.38
Total	**$63,933.75**

From the City Clerk—

Transmitting action of the City Council requesting the Park Board and the N. P. Railroad Company to cooperate in cutting the trees on Main Street between Thirteenth and Fourteenth Avenues Northeast.

From the Minneapolis Aquatennial Association—

Expressing appreciation for the Board's cooperation in making possible the God's Out-of-Door Temple Interdenominational Civic Service at Powderhorn Park.

From John T. McRae—

Expressing appreciation for the Resolution honoring Alexander A. McRae.

All placed on file.

From the University of Minnesota, Department of Buildings and Grounds—

Requesting permission to construct and maintain an extension of the University's sewer system on and across park

property in the vicinity of River Road East and Harvard Street.

Referred to the Standing Committee on Improvements.

From the Loring-Park Community Council—

Requesting the use of Loring park for a community picnic.

Referred to the Standing Committee on Playgrounds and Entertainments.

From the Dayton Company—

Requesting permission to use a portion of The Parade for a helicopter demonstration.

Referred to the Standing Committees on Playgrounds and Entertainments and Finance, acting jointly.

From the East Minneapolis Recreation Association, Inc.—

Requesting the Board to acquire the old Trudeau School site in Southeast Minneapolis for playground purposes.

Referred to the Standing Committees on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance, acting jointly.

Reports of Officers

From C. A. Bossen, Superintendent—

Submitting report on the activities of his department for the month of July, 1944.

Placed on file.

Reports of Standing Committees

From the Standing Committee on Finance.

Minneapolis, Minn.,
July 21, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance respectfully reports and recommends the approval of the payroll for July 1-15, inclusive, 1944, and a warrant was or-

dered drawn for the payment of the same amounting to $41,752.40.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Yeas—11; Nays—0.

Yeas—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Minneapolis, Minn.,
July 25, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance respectfully reports that consideration has been given to the report of the Superintendent and Airport Director setting forth the circumstances under which the automobile of Mr. Lawrence E. Alberts was damaged by a Park Board crew engaged in work on the parking area, and now recommends that Mr. Alberts be reimbursed in the sum of $7.00 for damages to his automobile upon his furnishing the necessary release from further claim.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Yeas—11; Nays—0.

Yeas—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Attached—
Recommendation of Airport Director—7/24/44.

Minneapolis, Minn.,
July 26, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance to whom was referred the report of the Superintendent dated July 26, 1944, concerning the case of Ole M. Erickson, an employee of the Board who was injured while on duty, respectfully reports and recommends that Mr. Erickson be placed on the Workmen's Compensation payroll and paid according to the terms of the Workmen's Compensation Law for 50% permanent partial disability of his right second finger, amounting to $300.00 at $20.00 per week; and recommends further that 2 per cent on Mr. Erickson's award of $300.00, or $6.00, be paid by check to the Industrial Commission for the benefit of the Special Compensation Fund.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Report of Dr. A. A. Zierold—7/25/44.
Recommendation of Superintendent—7/26/44.

Minneapolis, Minn.,
July 31, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Finance respectfully reports that it has considered the report of the Superintendent in the case of Peter A. Cook, a painter, who was granted vacation time in error, and now recommends that Mr. Cook be granted ten days' leave of absence with pay which is to be charged up against his vacation time as earned, all subject to the approval of the Civil Service Commission.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent—7/31/44.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Finance respectfully reports that consideration has been given to the report of the Superintendent and the Director of Recreation concerning the progress of the survey on recreation now being made by Mr. L. H. Weir of the National Recreation Association pursuant to action of the Board taken on April 5, 1944, and expressing the opinion that because of the diversion of some of Mr. Weir's time to advantageous purposes it appears doubtful that his survey can be completed within the two months' period established by said Board action. Your committee recommends that an additional two weeks' period over and above that set forth in action

of the Board on April 5 be granted to Mr. Weir for the purpose of completing his study and reports.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Director of Recreation—8/1/44.
Recommendation of Superintendent—8/2/44.

From the Standing Committee on Improvements.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Improvements respectfully reports that consideration has been given to the request of the Department of Buildings and Grounds of the University of Minnesota for permission to construct and maintain an extension of the University's sewer system on and across park property in the vicinity of River Road East and Harvard Street as shown on the attached plan marked drawing No. 2799, and in that connection has considered the report of the Superintendent and Engineer thereon and now recommends that the Department of Buildings and Grounds of the University of Minnesota be granted permission to construct and maintain sewer line shown on said drawing No. 2799 leading from the Nurses' Home and Pioneer Hall onto and across park property which is a part of River Road East just west of Harvard Street upon the following conditions:

1. That said construction shall not be undertaken unless the plan for said construction is approved by the City Engineer and his sewer department.

2. Said construction and subsequent maintenance is to be borne exclusively by the permittee hereof.

3. That during said construction or subsequent maintenance all usual precautions shall be taken to safeguard the public against injury, and the permittee shall save this Board free and harmless from any and all liability which may arise out of said construction or subsequent maintenance.

4. That after said construction, park property is to be left in as good condition as when entered upon, and in case of any future settlement of excavations, the permittee shall restore such sunken areas to the original grade.

5. This permit shall not take effect unless within thirty (30) days the permittee hereof shall notify the Secretary of this Board that it agrees to the conditions imposed by this permit.

Respectfully submitted,

PAUL C. JOHNSON,
C. L. STACY,
WASHINGTON YALE,
W. P. QUIST,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Communication from University of Minnesota—7/29/44.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Improvements to whom was referred the request of the Men's Club of St. Helena's Parish requesting that there be included in the postwar im-

provement projects, a project for the control of Minnehaha Creek between Thirty-eighth Avenue South and Nokomis Avenue respectfully reports that consideration has been given thereto and to the report of the Superintendent thereon and further reports that recommendations for the flood control of Minnehaha Creek are contained in a report as an appendix of the 1943 annual report and that these recommendations have been included in the projects for the postwar period, and now recommends that the Men's Club of St. Helena's Parish be so informed and that a copy of the report be sent to them.

Respectfully submitted,

PAUL C. JOHNSON,
WASHINGTON YALE,
C. L. STACY,
WALTER P. QUIST,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Communication from Men's Club, St. Helena's Parish—5/15/44.

From the Standing Committee on Playgrounds and Entertainments

Minneapolis., Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that consideration has been given to the request of the Loring-Park Community Council for the use of Loring Park on Monday, August 14, 1944, for a community picnic, and your committee recommends

that said request be granted subject to the supervision of the Superintendent of Parks.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Request of Loring-Park Community Council—7/31/44.

Minneapolis, Minn.
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that requests have been made to officers of the Board by representatives of community organizations for permission to operate seven rides at community celebrations in place of five as provided for in the regulations of the Board pertaining to such celebrations, and now recommends that that part of the regulations adopted February 21, 1940, providing for five rides and modified on May 6, 1942, to provide for six rides be now further modified so that seven rides will be permitted for all such community celebrations.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Minneapolis, Minn.,
July 28, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that consideration has been given to a report of the Superintendent referring to a study of the state's fishing laws being made by the interim committee of the legislature, and calling attention to certain inconsistencies existing in the present laws with reference to fishing in the city of Minneapolis, and further calling attention to certain corrective measures which should be taken in case the fishing laws of the state are revised. Your committee therefore recommends that the Commissioner of Conservation or other officials in charge of developing the revisions of the fishing laws be requested to include the following provisions:

(1) If the present opening date of fishing in lakes outside the city is changed to May 15 or another date, that the same opening date apply to the lakes in the city of Minneapolis.

(2) That the closing date of fishing in lakes in Minneapolis be not changed but remain the same as at present, namely, November 1. The reason for this is that city lakes are used for various ice sports such as skating and ice boating and that if winter fishing were permitted, serious hazards would be created.

(3) Theodore Wirth Lake (formerly Glenwood Lake) which is outside the corporate limits of the city of Minneapolis but within the park system of the city, should be closed to winter fishing the same as the city lakes.

(4) That section of the present laws relating to game and fish known as section No. 101.19 entitled "Fishing in Minneapolis" should be so worded as to apply to Minne-

apolis, thereby altering the phrase "not operating under home rule charter."

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent—7/28/44.
Reports of Lt. Bloomgren—6/19/44 and 7/19/44.

Reports of Special and Joint Committees

From the Joint Committee on Playgrounds and Entertainments and Finance

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committees on Playgrounds and Entertainments and Finance, acting jointly, respectfully report that consideration has been given to a request of the Dayton Company for permission to use a portion of The Parade for a helicopter demonstration sometime probably before mid September, and in that connection have considered the report of the Superintendent thereon, and now recommend that permission be granted to the Dayton Company to use the so-called circus grounds north of Wayzata Boulevard and west of Dunwoody Institute for the purpose of a helicopter demonstration under the supervision of the Superintendent of Parks and on the payment of a $100 fee, and upon the further condition that all necessary permits, licenses, clearances, etc., be obtained from such federal, state and local authorities as may have jurisdiction over such

demonstrations, and further that all laws, rules and regulations of federal, state and local departments be complied with, and that this Board be saved free from any and all liability by reason of this permit.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Request of the Dayton Company—7/21/44.

From the Joint Committee on Aviation, Finance and Improvements.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Special Committee on Aviation and Standing Committees on Finance and improvements, acting jointly, respectfully report that in carrying on construction work at the Municipal Airport under previous W.P.A. projects, certain alterations had been made to the grade of Thirty-fourth Avenue South between Fifty-ninth Street and Sixty-fourth Street with the approval of the City Council and the County Board; that providing a roadway surface equal to that on the original roadway has been hampered by weather conditions, the necessity of keeping traffic open and similar conditions, but that now it is in good condition to surface. To

facilitate public access to the airport, your committee now recommends that the Superintendent be authorized to make the necessary expenditures from the Airport Fund to suitably surface said Thirty-fourth Avenue from Fifty-ninth Street to Sixty-fourth Street.

Respectfully submitted,

WASHINGTON YALE,
PAUL C. JOHNSON,
WALTER P. QUIST,
MAUDE D. ARMITAGE,
JOSEPH A. WOJCIAK,
A. F. PILLSBURY,
C. L. STACY,
EDWARD CHALGREN,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Recommendation of Park Engineer—8/1/44.

From the Joint Committee on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committees on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance, acting jointly, respectfully report that consideration has been given to a request of the East Minneapolis Recreation Association, Inc. that this Board acquire the old Trudeau School site in Southeast

Minneapolis for playground purposes and that further development of this site be placed on the postwar project list of this Board, and in that connection have also considered the report of the Superintendent and his staff thereon.

The matter of playground requirements for this section of the second ward was the subject of a report dated July 29, 1937, and of a playground survey made April 6, 1938. It was recommended that an adequate site for playground and park purposes in this section was somewhat west of the Trudeau School site. The report of April 6, 1938, above referred to, further pointed out that real progress toward the solution of problems arising out of inadequate playground facilities could not be made until adequate funds for maintenance and operation were provided.

In the opinion of your committees, the Trudeau School site is inadequate in size and would ultimately have to be enlarged to probably a two block area; should this be done, it is still not in a suitable location; in its present situation the conduct of a recreation program there would be so limited and have such a small beneficial effect upon the neighborhood that its cost could not be justified; that in any event the cost of operating additional play areas cannot be met out of current finances of this Board.

Therefore, your committees recommend that the request of the East Minneapolis Recreation Association, Inc. be not granted. At the same time, your committees recognize the need for recreation facilities and of the conduct of an adequate recreation program in that area of the second ward, especially west of Tenth Avenue. They also recognize the needs of a number of similar areas throughout the city, all of which will be more thoroughly covered in a forthcoming recreation survey now being conducted.

Your committees recommend that the Board call to the attention of the East Minneapolis Recreation Association, Inc. the fact that such a survey is being made and request said association to give careful consideration to the findings of such a survey when it is complete, to the end that

adequate and appropriate solutions to community problems covered therein may be found.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
T. F. MCCARTHY,
C. L. STACY,
WASHINGTON YALE,
H. H. BANK,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent, Director of Recreation, and Secretary and Ass't Superintendent—8/2/44.

Request of East Minneapolis Recreation Association, Inc.—7/21/44.

From the Joint Committee on Aviation, Finance, Improvements and Designation and Acquisition of Grounds

Minneapolis, Minn.,
August 1, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Special Committee on Aviation and Standing Committees on Finance, Improvements and Designation and Acquisition of Grounds, acting jointly, respectfully report that consideration has been given to various details preparatory to turning over to the Minneapolis-Saint Paul Metropolitan Airports Commission the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) and particular attention has been given to two proposed contracts between the Board and said Commission, to-wit: (1) A contract describing and enumerating what proper-

ties are to be so taken over, under what conditions and with what encumbrances or limitations and stating the rights, privileges and obligations of the parties thereto, and fixing the date of taking over as August 15, 1944, all as per copy transmitted herewith dated August 14, 1944; and (2) a contract whereby this Board agrees to furnish certain labor, material, supplies and supervision at cost plus overhead up to July 1, 1945, under certain conditions, the purposes being to preserve the civil service and pension status of present airport employees and to facilitate the operation during a transition period. A copy of this contract dated August 14, 1944, is attached hereto. Both agreements are required to carry out the intent and purposes of the so-called Metropolitan Airports Act (Chapter 500, Minnesota Session Laws for 1943).

Attention is called to the first agreement above referred to. It will be recalled by the Board members that in the financing of the construction of the hangars of the Northwest Airlines, Inc., and Mid-Continent Airlines, Inc. that a total of $215,000 in bonds was sold by the Board of Estimate and Taxation upon the request of the City Council and this Board; and that this Board agreed with the City Council and the Board of Estimate and Taxation that the above amount would be fully amortized out of the rents received for the said hangars; and that the rents were established on that basis; and that the monies so received have been paid to the Sinking Fund of the City each month up to the present time. Your appointee and other Minneapolis appointees to the said Airports Commission have brought these facts to the attention of said Commission and have sought diligently to have the agreement so drawn as to retain for Minneapolis the income from the rental of said hangars and payments made to the Sinking Fund as heretofore, in order to fulfil the original intent and purposes of the financing of said hangars. Such a procedure was questioned as being contrary to the provisions of the Metropolitan Airports Act and an opinion on the question was obtained from the Attorney General. Copy of said opinion is attached hereto and holds that the said Airports Commission is entitled to all income from leased properties at the airport, that said Commission cannot remit to either

city any portion of its income for the retirement of outstanding bonds, that the Commission may assume the bonded indebtedness of either city but in doing so, it must do so equitably for both cities. Hence under the Attorney General's opinion, Minneapolis cannot retain the rents from said hangars, and therefore this Board cannot carry out its agreement with the City Council and the Board of Estimate and Taxation to retire the remaining bonded indebtedness for said hangar construction.

Moreover, the Supreme Court has recently held in two decisions that the law establishing the Minneapolis-Saint Paul Metropolitan Airports Commission is valid. Therefore, the Minneapolis Municipal Airport (Wold-Chamberlain Field) must be turned over to the Minneapolis-Saint Paul Metropolitan Airports Commission pursuant to said law.

Your committees are in accord with the terms of said contracts and now recommend that the proper officers of the Board be and they hereby are authorized to enter into said contracts on behalf of the Board, and to that end recommend adoption of the accompanying resolution offered by Commissioner Yale.

It is further recommended that copies of this report be transmitted to the City Council and the Board of Estimate and Taxation as explanation of the impossibility of this Board to further fulfil its agreement to make payments to the Sinking Fund for the retirement of bonds heretofore issued for the construction of the hangars for Northwest Airlines, Inc. and the Mid-Continent Airlines, Inc.

Respectfully submitted,

WASHINGTON YALE,
PAUL C. JOHNSON,
WALTER P. QUIST,
MAUDE D. ARMATAGE,
JOSEPH A. WOJCIAK,
A. F. PILLSBURY,
C. L. STACY,
H. H. BANK,
T. F. MCCARTHY,
FRANCIS A. GROSS,
Committee.

Adopted.

Commissioner Chalgren votes no.

Attached—

Two contracts—8/14/44.
Attorney General's opinion—3/29/44.
Minn. Supreme Court decision—7/7/44.

Resolution

Commissioner YALE—

Offered the following resolution:

Be It Resolved, by the Board of Park Commissioners of the City of Minneapolis that the President and Secretary are hereby authorized to execute on behalf of the City of Minneapolis, acting by and through its Board of Park Commissioners, and to deliver the two contracts submitted to this meeting, each dated August 14, 1944, and each contract being with the Minneapolis-Saint Paul Metropolitan Airports Commission; the first contract being a contract to turn over the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to the terms of Chapter 500 of the Session Laws of Minnesota for 1943; the second contract being a contract under the terms of which the Park Board agrees to furnish such personnel, material, supplies and services as the Commission or its Director of Airways may from time to time require and request for the operation and maintenance of the Minneapolis-Saint Paul Metropolitan Airport (Wold-Chamberlain Field) up to July 1, 1945.

Adopted.

Yeas—10; Nays—1.

Yeas—Commissioners Armatage, Bank, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—10.

Nays—Commissioner Chalgren—1.

New Business

Commissioner Pillsbury informed the Board that he was in possession of a letter from Frank T. Heffelfinger offering

to donate to the Board an artistic fountain together with a sum of money sufficient to install the same when said amount shall have been determined. The Superintendent was instructed to determine the cost of installation and the matter was referred to the Standing Committee on Improvements.

Commissioner Chalgren—
Moved to adjourn.
Adopted.
Adjourned.

FRANCIS A. GROSS,
President.
CHAS. E. DOELL,
Secretary.

STATE OF MINNESOTA,
County of Hennepin,
City of Minneapolis, ss:

I, Chas. E. Doell, Secretary and Assistant Superintendent of the Board of Park Commissioners of the City of Minneapolis, in the County of Hennepin and State of Minnesota, do hereby certify that I have examined the attached proceedings of the Board of Park Commissioners of said City of August 2, 1944, and have carefully compared the same with the original thereof now on file in this office, and that said attached copy of proceedings is a true and correct copy from said original proceedings.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said City, this 10th day of November A. D. 1944.

Chas. E. Doell, Secretary & Ass't. Superintendent.

EXHIBIT B

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN, *Appellant,*

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. MCCARTHY, A. A. MCRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Appellees.*

AFFIDAVIT

STATE OF MINNESOTA,
County of Ramsey, ss:

John J. McDonough being first duly sworn deposes and states:

That he was on August 14, 1944, ever since has been and is now the Vice Chairman of the Minneapolis-St. Paul Metropolitan Airports Commission, created, organized and existing under and by virtue of Chapter 500, Session Laws of the State of Minnesota for 1943.

That a written agreement dated the 14th day of August, 1944, and executed as of that date by the City of Minneapolis, a municipal corporation, created, organized and operating under the laws of the State of Minnesota, acting by and through its Board of Park Commissioners, a department of the government of said city, was presented at a reg-

ular meeting of said Airports Commission, held in its offices in the City of St. Paul, Minnesota, on said 14th day of August, 1944. That said written agreement provided that said City of Minneapolis, acting by and through its said Board of Park Commissioners, turn over to said Minneapolis-St. Paul Metropolitan Airports Commission as of August 15, 1944, the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field), and as of said date transfer all personal property owned by said City of Minneapolis, acting by and through its Board of Park Commissioners, and used in connection with said airport, to said Airports Commission, pursuant to the provisions of said Chapter 500; and that at said meeting a resolution that said written agreement be executed by the Chairman and the Secretary of said Airports Commission on behalf of said Airports Commission was duly adopted, and that immediately following said adoption said Chairman and said Secretary did execute said agreement on behalf of said Airports Commission.

That following the execution of said contract and on said 15th day of August, 1944, and pursuant to said contract and said Chapter 500, the said Board of Park Commissioners and the said City of Minneapolis, acting by and through its said Board of Park Commissioners, turned over the use, management, operation, regulation, policing and control of said Minneapolis Municipal Airport (Wold-Chamberlain Field) and transferred all said personal property to said Minneapolis-St. Paul Metropolitan Airports Commission; and that at all times since said 15th day of August, 1944, said Minneapolis-St. Paul Metropolitan Airports Commission has had and now has the use, management, operation, regulation, policing and control of said Minneapolis Municipal Airport (Wold-Chamberlain Field) and the ownership with possession and use of said personal property, all pursuant to said Chapter 500.

Affiant makes this affidavit in place of the Chairman and Secretary of said Airports Commission for the reason that both the Chairman and Secretary have been for some days past, are now and for some days to come will be absent from the State and not available for the purpose of making

an affidavit covering the facts aforesaid in time for filing with and as a part of objections to jurisdiction, and required to be filed with the above court within fifteen days after service of the jurisdictional statement of appellant.

JOHN J. McDONOUGH.

Subscribed and sworn to before me this 18th day of November, 1944.

HARRY T. O'CONNELL,
Notary Public, Ramsey County, Minn.

My Commission expires June 20, 1947.

(Notarial Seal)

(5420)

No. 705. MONAGHAN *v.* ARMATAGE ET AL. Appeal from the Supreme Court of Minnesota. January 2, 1945. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *City of Trenton* v. *New Jersey*, 262 U. S. 182; *Risty* v. *Chicago, R. I. & P. R. Co.*, 270 U. S. 378, 390; *Williams* v. *Mayor*, 289 U. S. 36. *Mart M. Monaghan, pro se. Messrs. Paul J. Thompson, William H. Oppenheimer,* and *Montreville J. Brown* for appellees. Reported below: 218 Minn. 108, 15 N. W. 2d 241.